

2013 DRAFTING REQUEST

Bill

Received: **2/11/2013** Received By: **btradewe**

Wanted: **As time permits** Same as LRB:

For: **Agricult. Trade and Cons. Prot.** By/Representing: **David Meany**

May Contact: Drafter: **btradewe**

Subject: **Agriculture - food safety** Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **David.Meany@wisconsin.gov**

Carbon copy (CC) to: **Keeley.Moll@wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Food additives, adulteration, and misbranding

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 3/19/2013			_____			
/P1	btradewe 9/11/2013	scalvin 4/1/2013	phenry 4/1/2013	_____	mbarman 4/1/2013		
/1		scalvin 9/18/2013	rschluet 9/18/2013	_____	lparisi 9/18/2013	lparisi 9/18/2013	

FE Sent For:

None
Needed

<END>

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/?	btradewe 3/19/2013			_____			
/P1		scalvin 4/1/2013	phenry 4/1/2013	_____	mbarman 4/1/2013		

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*1 sac
09/18/2013*

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/?	btradewe	1/Pl sac 03/29/2013	4/ ph	4/ jrp			

FE Sent For:

<END>

Wisconsin Department of Agriculture, Trade and Consumer Protection

PROPOSAL FOR LEGISLATIVE ACTION

Date: February 8, 2013

Working Title of Act: Modernizing Food Additive, Quality and Identity Standards

Statute Sections affected by action: Definitions, s. 97.01, Wis. Stats.; Standards; adulterated food, s. 97.02, Wis. Stats.; Standards; misbranding, s. 97.03, Wis. Stats.; Sale of certain foods regulated and restricted, s. 97.46, Wis. Stats.; Benzoic acid in foods, s. 97.47 Wis. Stats.; Dairy products, adding foreign fats; oleomargarine permitted, s. 97.48, Wis. Stats.; Adulterated, insanitary milk, s. 97.50, Wis. Stats.; Insanitary or adulterated milk and cream; sale; delivery prohibited, s. 97.52, Wis. Stats.; and Adulteration of meats, s. 97.53, Wis. Stats.

Description of action, i.e. create new section; amend existing section, repeal and recreate existing section: Amend ss. 97.01(7), 97.02, 97.03, Wis. Stats. Repeal ss. 97.46, 97.47, 97.48, 97.50, 97.52, and 97.53, Wis. Stats.

Plain-language description of what action does: This statutory change would remove sections that are directly redundant with state statutes, or redundant with federal statutes that are adopted by reference in state statutes. Legal food additives are already defined in s. 97.01 (7), Wis. Stats. Food adulteration and misbranding are already described in ss. 97.02 and 97.03, Wis. Stats., respectively. These sections, with minor amendment, will render ss. 97.46, 97.47, 97.48, 97.50, 97.52, and 97.53, Wis. Stats.; redundant.

Relationship of this action to any relevant federal laws or regulations: State statutory language related to food additives, adulteration, and misbranding will be amended to adopt by reference relevant sections from the federal Food, Drug and Cosmetic Act, the Federal Meat Inspection Act, the federal Poultry Products Inspection Act, and associated sections in the Code of Federal Regulations. The proposed action will enhance the integration of state and federal food safety regulatory programs.

Fiscal effect on WDATCP: This action is not expected to result in any appreciable fiscal effect on WDATCP.

Statutory changes:

Sections 97.46, 97.47, 97.48, 97.50, 97.52, and 97.53, Wis. Stats., would be repealed as follows:

~~97.46—Sale of certain foods regulated and restricted.~~

~~(1) No person may, by himself or herself, or by his or her agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale or have in his or her possession with intent to sell for use or consumption within this state, any article of food within the meaning of s. 97.01, which contains formaldehyde, sulfurous acid or sulfites, boric acid or borates, salicylic acid or salicylates, saccharin, dulcin, glucin, beta naphthol, abrastol, asaprol, fluorides, fluoborates, fluosilicates or other fluorine compounds, or any other preservatives injurious to health. Nothing contained in this section prohibits the use of common salt, saltpeter, wood smoke, sugar, vinegar and condimental preservatives, such as turmeric, mustard, pepper and other spices. No person by himself or herself, or by agents or servants,~~

may manufacture, sell, ship, consign, offer for sale, expose for sale or have in his or her possession with intent to sell for use or consumption within this state, any article of food within the meaning of s. 97.01, containing any added substance, article or ingredient possessing a preservative character or action other than the common salt, saltpeter, wood smoke, sugar, vinegar and condimental preservatives such as turmeric, mustard, pepper and other spices, unless the presence, name and proportionate amount of the added substance, article or ingredient is plainly disclosed to the purchaser.

(2) This section shall not be construed to prohibit the sale of dietary foods containing saccharin in containers labeled in accordance with s. 97.03, nor the use of sulfur dioxide or sulfites as anti-oxidants in the processing of potatoes, frozen apples, grape juice, reconstituted lemon juice or reconstituted lime juice provided such foods contain not more than 350 parts per million SO₂; nor the use of sulfur dioxide in molasses or in the processing of dried fruits, dried vegetables, pickled vegetables or fruit pectin in amounts no more than may be necessary in good manufacturing practice. Any person who refreezes or offers for sale any refrozen fruit containing sulfur dioxide or sulfites as anti-oxidants in not more than 350 parts per million, may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both, and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year. The department may promulgate rules limiting the quantity therein for any such dried fruit, dried vegetables, pickled vegetables, fruit pectin or molasses.

History: 1971 c. 156, 286, 307; 1979 c. 89.

97.47—Benzoic acid in foods. No person shall sell, offer, or expose for sale or have in possession with intent to sell for use or consumption in this state, any meat products or dairy products that contain added benzoic acid or benzoates; or any other article of food as defined in s. 97.01 that contains added benzoic acid or benzoates in excess of one-tenth of one percent. The presence shall be stated on the label. When in the preparation of food products for shipment they are preserved by any external application of benzoic acid or benzoates in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, this section shall be construed as applying only when said products are ready for consumption.

History: 1971 c. 156, 286, 307; 2009 a. 177.

97.48—Dairy products, adding foreign fats; oleomargarine permitted.

(1) (a) In this subsection "dairy product" means all of the following:

1. A product, except mellorine, described in 21 CFR 131 to 135.

2. "Butter" as described in s. 97.01 (1).

2m. "Light butter" as described in s. 97.03 (3) (b).

3. "Yogurt", "lowfat yogurt" and "skim milk yogurt" or "nonfat yogurt" as described by rule by the department.

(b) No person may sell any food product that is made to resemble a dairy product unless:

1. The food product bears a statement on the main display panel of the package or container stating that the food is an artificial product in letters not less than one-half the size of the product name, but in no case may the letters be smaller than 18 point type size; and

2. The label on the food product clearly states the major differences in ingredients and nutritional value between the artificial product and the dairy product it is made to resemble.

(c) A food product is made to resemble a dairy product if any of the following occurs:

1. The food physically resembles a dairy product.

~~2. The packaging used resembles the packaging used for a dairy product.~~

~~3. The food is displayed in a retail establishment in the same manner as a dairy product.~~

~~4. Verbal or pictorial expressions are used on the food's labeling or in advertisements or other similar devices used to promote the food that state or imply that the food is a dairy product.~~

~~(d) The department may adopt rules that are needed to implement and administer this subsection.~~

~~(2) This section does not prohibit the manufacture or sale of proprietary foods containing milk or skim milk to which have been added any fat or oil other than milk fat when such foods are clearly labeled to show their composition and the fact that they are to be sold exclusively for use as directed by physicians.~~

~~(3) This section does not prohibit the manufacture or sale of oleomargarine or margarine.~~

~~(4) The sale or serving of any product for use as a coffee cream or whitener in any restaurant or public eating establishment, other than cream, half and half or lighter varieties of cream, is prohibited. This subsection shall not apply to coffee whitener sold or dispensed by a vending machine provided such machine bears a prominently affixed label or legend stating that the coffee whitener sold or dispensed is not a dairy product or is an imitation dairy product.~~

History: 1971 c. 212; 1977 c. 83; 1981 c. 345; 1983 a. 189 s. 329 (20); 1991 a. 111.

Although sub. (4) achieves the legitimate state interest of preventing fraudulent substitution of nondairy whiteners for cream without the knowledge or assent of the restaurant consumer, the statute imposes a clearly excessive burden upon interstate commerce. *Coffee Rich, Inc. v. Department of Agriculture*, 70 Wis. 2d 265, 234 N.W.2d 270 (1975).

97.50 Adulterated, insanitary milk.

~~(1) INSANITARY MILK. Milk which is drawn from cows kept in a filthy or unclean condition; or milk drawn from any sick cow or cow having running sores; or milk drawn from cows fed unwholesome food or on refuse or slops from distilleries or vinegar factories, unless such refuse or slop is mixed with other dry sanitary grain or feed to a consistency of thick mash; or milk drawn from cows within 15 days before or 5 days after calving; or milk which is drawn from cows that are kept in barns or stables which are not reasonably well lighted and ventilated, or that are kept in barns or stables that are filthy from an accumulation of animal feces and excreta or from any other cause; or milk to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance; or milk kept or transported in dirty, rusty or open-seamed cans or other utensils; or milk that is stale, putrescent or putrid; or milk to which has been added any unclean or unwholesome substance; or milk contaminated by being kept in stables or barns occupied by animals, or kept exposed in dirty, foul or unclean places or conditions, is declared to be insanitary milk.~~

~~(2) INSANITARY CREAM. Cream produced from insanitary milk; or cream produced by the use of a cream separator, which had not been thoroughly cleansed and scalded after last previous use; or cream produced by the use of a cream separator placed or stationed in any unclean or filthy place or in any building containing a stable wherein animals are kept, unless such separator is so shielded by partition from the stable portion of such building as to be free from all foul or noxious air or gases which issue or may issue from such place or stable; or cream that is stale, putrescent or putrid; or cream that is kept or transported in dirty, rusty or open-seamed cans or other utensils; or cream that has been kept exposed to foul or noxious air or gases in barns occupied by animals, or in foul or unclean places or conditions, is hereby declared to be insanitary cream.~~

~~(3) ADULTERATED MILK. Any insanitary milk or any milk containing less than 3% of milk fat; or milk containing less than 8.25% of milk solids not fat; or milk which contains or to which has been added or into which has been introduced any foreign substance is adulterated milk.~~

~~(4) ADULTERATED CREAM.~~ Any insanitary cream or any cream containing less than 18% of milk fat; or any cream produced from adulterated milk; or any cream which contains or to which has been added or into which has been introduced any foreign substance is adulterated cream.

~~(5) SALE OF CERTAIN PASTEURIZED MILK OR CREAM NOT PROHIBITED.~~ This section does not prohibit the sale of pasteurized milk or cream to which viscogen or sucrate of lime has been added solely for the purpose of restoring the viscosity, if the same be distinctly labeled in such manner as to advise the purchaser of its true character.

~~(6) SALE OF CERTAIN SKIM MILK NOT PROHIBITED.~~ This section does not prohibit the sale of skim milk when the same is sold as and for "skim milk".

Cross-reference: See also ch. ATPC 60, Wis. adm. code.

97.52 — Insanitary or adulterated milk and cream; sale; delivery prohibited. It is unlawful to sell or offer for sale, furnish or deliver, or have in possession or under control with intent to sell or offer for sale, or furnish, or deliver as food for persons, or to any dairy plant any adulterated or insanitary milk or cream. The department shall establish sanitary standards for the production, handling and transportation of milk, and prescribe rules whereby the intake of each producer of milk shall be inspected, sampled and tested by the sediment, methylene blue, or other tests, and insanitary milk or cream shall be rejected as food for persons or to be processed or manufactured for food for persons, and shall be identified, in a manner that will not prevent its use as food for animals, and rules for the keeping of the test records, the prevention of further delivery of insanitary milk or cream by such producer, and the correction of the insanitary condition.

History: 1975 c. 94 s. 91 (10).

Cross-reference: See also ch. ATPC 60, Wis. adm. code.

97.53 — Adulteration of meats. No person shall offer or expose for sale, take offers for, or sell, or have in his or her possession with intent to sell for consumption within the state any sausage or chopped meat compound containing any artificial coloring, or chemical preservative or antiseptic, except common salt, sodium or potassium nitrate, sodium or potassium nitrite, sodium ascorbate, ascorbic acid, spices or wood smoke. Ascorbic acid and sodium ascorbate shall be limited to use in cooked cured comminuted meat food products in the amount of three fourths of an ounce of ascorbic acid or seven eighths of an ounce of sodium ascorbate for each 100 pounds of fresh uncured comminuted meat or meat by-products and, when used, they shall be included in the statement of ingredients either as "ascorbic acid" or "sodium ascorbate" as the case may be.

History: 1993 a. 492.

Sections 97.01, 97.02, 97.03, Wis. Stats., would be amended as follows:

97.01(7) "Food additive" is defined in 21 USC §321 (s). means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use

in food) to be safe under the conditions of its intended use; except that such term does not include a pesticide chemical in or on a raw agricultural commodity, or a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity, or a color additive, or any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives amendment of 1958, pursuant to the federal act.

97.02 Standards; adulterated food. A food is adulterated: under this chapter if it meets the definition of adulterated food in 21 USC §342.

- (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health.
- (2) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive, which is unsafe within the meaning of the federal act or any deleterious substance not a necessary ingredient in its manufacture.
- (3) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of the federal act.
- (4) If it is or it bears or contains any food additive which is unsafe within the meaning of the federal act, but where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under the federal act and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed food shall, notwithstanding other provisions in this section, not be deemed unsafe if the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.
- (5) If it is or bears or contains any color additive which is unsafe within the meaning of the federal act or other provisions in this section.
- (6) If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food.
- (7) If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health.
- (8) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.
- (9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
- (10) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
- (11) If any substance has been substituted wholly or in part therefor.
- (12) If damage or inferiority has been concealed in any manner.
- (13) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.
- (14) If it is confectionary, and
 - (a) Has partially or completely imbedded therein any nonnutritive object: provided, that this paragraph shall not apply in the case of any nonnutritive object if, in the judgment of the department as provided by regulations, such object is of practical functional value to the confectionary product and would not render the product injurious or hazardous to health;
 - (b) Bears or contains any alcohol in excess of one-half of one percent by volume derived solely from the use of flavoring extracts; or

(c) Bears or contains any nonnutritive substance; but this paragraph shall not apply to a safe nonnutritive substance which is in or on confectionary by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of the confectionary if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter. The department may, for the purpose of avoiding or resolving uncertainty as to the application of this paragraph, promulgate rules allowing or prohibiting the use of particular nonnutritive substances.

97.03 Standards; misbranding. (1) A food is misbranded under this chapter if it meets the definition of misbranded food in 21 USC §343. :

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If its container is so made, formed or filled as to be misleading.

(d) If in package form, unless it bears a label containing all of the following:

1. The name and place of business of the manufacturer, packer or distributor.

2. An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

(e) If any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(f) If it is represented as a food for which a definition and standard of identity has been prescribed under s. 97.09 unless it conforms to such definition and standard and its label, except when its label complies with the federal act, bears the name of the food specified in the definition and standard and the common names of ingredients present in such food.

(g) If it is represented as:

1. A food for which a standard of quality has been prescribed under s. 97.09 and its quality falls below such standard unless its label bears, in the manner and form as such regulations specify, a statement that it falls below such standard.

2. A food for which a standard or standards of fill of container have been prescribed under s. 97.09 and it falls below the standard of fill of container applicable thereto, unless its label bears, in the manner and form as such regulations specify, a statement that it falls below such standard.

(h) If it is a food for which no definition or standard of identity has been prescribed unless it bears a label clearly giving the common or usual name of the food if any, and in case it is fabricated from 2 or more ingredients, the common or usual name of each such ingredient; provided that to the extent that compliance with this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by departmental rule.

(i) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the department determines to be, and prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears a label stating that fact.

(m) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(n) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the federal act.

(2) (a) Packages of fresh fruits and vegetables, the contents of which are plainly visible to the purchaser shall be exempt from a declaration of numerical count and identity under this section if the package contains 6 units or less, except that when the quantity of the food is customarily expressed in terms of weight or measure, as distinguished from numerical count, the food shall bear a label declaring the quantity.

(b) A food is exempt from labeling requirements under this section if the food, having been received in bulk containers by a retailer, is packaged by the retailer and displayed to the purchaser with a counter card, sign or other appropriate device bearing prominently and conspicuously the label information required by this section.

(c) Sausage enclosed in a casing is exempt from labeling requirements under this section if it is displayed to the purchaser with a counter card, sign or other appropriate device bearing prominently and conspicuously the label information required by this section; but if the sausage is weighed at the time of sale a statement of weight is not required. If encased sausage is placed in another package, labeling requirements of this section apply.

(d) Bakery products enclosed in transparent containers or enclosed in containers which provide a transparent opening to afford a clear view of the product are exempt from labeling requirements under this section when such products are sold at retail by the bakery operator or the bakery operator's employee direct to the consumer at the baker's own retail bakery service counter operated by the baker who has produced these products, and when displayed to the purchaser with a counter card, sign or other appropriate device bearing conspicuously the label information required under this section.

(e) A food shall be exempt from the labeling requirements under this chapter if the food, in accordance with the practice of the trade, is to be processed, labeled or repacked in substantial quantities by the buyer, on condition that such food is not adulterated or misbranded under this chapter upon completion of such processing, labeling or repacking by the buyer.

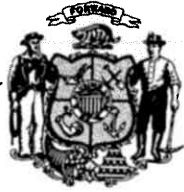
(3) (a) Except as provided in par. (b), no person may use the term "butter" in the name or in connection with the name, designation, advertising or description of any article of food prepared and offered for sale or served with any meal for which a charge is made unless all of the fat contained in such article of food is butterfat.

This paragraph does not prohibit any representation that a food is flavored with butter if at least 12% of the fat in such food is butterfat or if the food contains the concentrated flavor elements derived from natural butterfat in sufficient quantities to impart a characteristic butter flavor.

(b) A person may use the term "light butter" or "lite butter" in the name or in connection with the name, designation, advertising or description of an article of food prepared and offered for sale or served with any meal if the product is produced to resemble butter, contains 52% butterfat within tolerances that are acceptable to the department, has at least one-third fewer calories than butter, is made from pasteurized milk or cream or both and contains 15,000 international units of vitamin A per pound within tolerances of good manufacturing practices. The product may contain only the following additional ingredients:

1. Partially skimmed or skim milk.
2. Buttermilk.
3. Whey and whey-derived ingredients.
4. Water.
5. Salt or salt substitutes.
6. Bacterial cultures.
7. Nutritive sweeteners.
8. Emulsifiers and stabilizers.
9. Safe and suitable color additives.
10. Natural flavors.

~~11. Safe and suitable ingredients that improve texture, prevent syneresis or extend the shelf life of the product.~~



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1574/P1

RCT.):...

In 3/19

Sec

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Note

RKF ✓

gen cat

1 AN ACT *gen cat*; relating to: adulterated, misbranded, and insanitary food.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 97.01 (2)^x of the statutes is repealed.

3 SECTION 2. 97.01 (7)^x of the statutes is repealed.

4 SECTION 3. 97.02^x (intro.) of the statutes is renumbered 97.02 and amended to
5 read:

6 **97.02 Standards; adulterated food.** A For the purposes of this chapter, a
7 food is adulterated: if it is adulterated within the meaning of 21 USC 342.

History: 1971 c. 156; 1979 c. 89; 2005 a. 253; 2009^x a. 177.

8 SECTION 4. 97.02 (1) to (14) of the statutes are repealed.

9 SECTION 5. 97.03 (1) (intro.) of the statutes is renumbered 97.03 and amended
10 to read:

1 **97.03 Standards; misbranding** A For the purposes of this chapter, a food is
2 misbranded: if it is misbranded within the meaning of 21 USC 343.

3 History: 1971 c. 156 ss. 2, 3, 5; 1977 c. 216; 1991 c. 111; 1993 a. 492; 1995 a. 225.

3 **SECTION 6.** 97.03 (1) (a) to (n), (2) and (3) of the statutes are repealed.

4 **SECTION 7.** 97.22^{*} (10) of the statutes is amended to read:

5 **97.22 (10) CONFIDENTIALITY.** Any information obtained and kept by the
6 department under this section, under s. 97.24 ~~or 97.52~~, or under rules promulgated
7 under those sections, that pertains to individual milk producer production, milk fat
8 and other component tests and quality records is not subject to inspection under s.
9 19.35 except as required under s. 126.70 or except as the department determines is
10 necessary to protect the public health, safety or welfare.

11 History: 1975 c. 39; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39; 1993 a. 114; 2001 a. 16; 2011 a. 209.

11 **SECTION 8.** 97.23 (2) (a) of the statutes is amended to read:

12 **97.23 (2) (a)** If, in accordance with a rule promulgated by the department under
13 s. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8), or 97.24 (3) ~~or 97.52~~, a dairy plant operator
14 rejects a bulk milk shipment because it is adulterated with a drug residue and if the
15 dairy plant operator incurs a monetary loss as a result of the rejection of the bulk
16 milk shipment, the dairy plant operator may recover the amount of the monetary loss
17 from the milk producer who caused the bulk shipment to be adulterated with the
18 drug residue. A dairy plant operator may deduct the amounts recoverable by him
19 or her under this paragraph from the proceeds of milk sold to or through the dairy
20 plant operator by the milk producer who caused the adulteration.

21 History: 1991 a. 231.

21 **SECTION 9.** 97.46^{*} of the statutes is repealed.

22 **SECTION 10.** 97.47[^] of the statutes is repealed.

23 **SECTION 11.** 97.48[^] of the statutes is repealed.

24 **SECTION 12.** 97.50^{*} of the statutes is repealed.

1 **SECTION 13.** 97.52^x of the statutes is repealed.

2 **SECTION 14.** 97.53^y of the statutes is repealed.

3 **SECTION 15.** 100.057^z of the statutes is amended to read:

4 **100.057 Wisconsin cheese logotype.** The department shall design an
5 official logotype appropriate for affixation to and display in connection with natural
6 cheese meeting quality standards established by the department and manufactured
7 in this state entirely from milk which is produced under standards which are equal
8 to or greater than standards established under s. 97.24 and rules adopted under s.
9 97.24 ~~or under minimum sanitary and quality standards prescribed under s. 97.52~~
10 ~~and rules adopted under s. 97.52.~~ The design shall consist of an outline of the
11 boundaries of the state and the words "100% Wisconsin Cheese" and such other
12 specifications as the department deems appropriate. Nothing in this section shall
13 prohibit the use of other appropriate labels or logotypes.

History: 1975 c. 323; 1977 c. 157.

(END)

14
Insert 3-13

Wate

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1574/P1ins
RCT.....

1 **Insert 3-13**

2 **SECTION 1.** 100.36 of the statutes is amended to read:

3 **100.36 Frauds; substitute for butter; advertisement.** No person may use
4 the word "butter" in any way in connection or association with the sale or exposure
5 for sale or advertisement of any substance designed to be used as a substitute for
6 butter. No person may use terms such as "cream", "creamery" or "dairy", or the name
7 or representation of any breed of dairy cattle, or any combination of such words and
8 representation, or any other words or symbols or combinations thereof commonly
9 used in the sale of butter unless at least 40% of the substitute is butterfat. If the term
10 "butter" is used in connection with the name of any such product, it shall be qualified
11 so as to distinguish it from butter as defined in s. 97.01 (1). ~~Nothing in this section~~
12 ~~prohibits a person from using the term "light butter" or "lite butter" in the manner~~
13 ~~provided in s. 97.03 (3) (b).~~

History: 1983 a. 189 s. 329 (20); 1991 a. 111.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1574/P1dn

RCT.)....

Sac

-date-

David Meany:

This is a preliminary draft of the proposal to change the statutes relating to food adulteration and misbranding and related matters.

Because there would be no uses of the terms "color additive" and "food additive" in ch. 97 after the changes to ss. 97.02 and 97.03 in this draft, it is necessary to repeal the definitions of those terms.

* There are references to s. 97.52 in other sections of the statutes. Please review the treatment of these references. *There is a reference to s. 97.03(3)(b) in s. 100.36.*

Please don't hesitate to contact me with any questions, including questions about how I drafted any provisions, and with descriptions of any changes that are wanted. If the draft is acceptable as drafted, let me know and I will write an analysis and put the draft into introducible form.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Please review the treatment of s. 100.36.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1574/P1dn
RCT:sac:ph

April 1, 2013

David Meany:

This is a preliminary draft of the proposal to change the statutes relating to food adulteration and misbranding and related matters.

Because there would be no uses of the terms "color additive" and "food additive" in ch. 97 after the changes to ss. 97.02 and 97.03 in this draft, it is necessary to repeal the definitions of those terms.

There are references to s. 97.52 in other sections of the statutes. Please review the treatment of these references. There is a reference to s. 97.03 (3) (b) in s. 100.36. Please review the treatment of s.100.36.

Please don't hesitate to contact me with any questions, including questions about how I drafted any provisions, and with descriptions of any changes that are wanted. If the draft is acceptable as drafted, let me know and I will write an analysis and put the draft into introducible form.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Daniels, Cheryl F - DATCP <Cheryl.Daniels@wisconsin.gov>
Sent: Wednesday, September 11, 2013 2:11 PM
To: Tradewell, Becky
Cc: Moll, Keeley A - DATCP; Meany, David V - DATCP; Ingham, Steve C - DATCP
Subject: LRB draft 1574/P1
Attachments: 13-1574_P1 (3).pdf

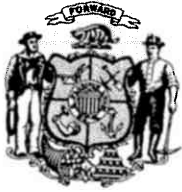
Becky,

In reference to this attached draft, we have one addition. We find the drafting done by LRB, including the points raised by you in your cover letter, to be fine, generally.

We did notice one section 97 that we forgot to target for amendment because of obsolete language. If possible we'd like to delete the last section of 97.18 (1) a, which reads "Colored oleomargarine or margarine shall be made of domestic fats or oils and shall not be made imported oils which include, without restriction because of enumeration, whale oil, coconut oil and palm oil."

If that section could be added, the draft would be fine for jacketing. Cheryl

Cheryl Furstace Daniels
Assistant Legal Counsel
Wisconsin Department of Agriculture,
Trade and Consumer Protection and
Livestock Facility Siting Review Board
2811 Agriculture Dr., Madison WI 53708-8911
608-224-5026



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1574/11
RCT:sac:ph

COON (m 9/11) to day
if possible

1M

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

please regenerate
↓

1 AN ACT *to repeal* 97.01 (2), 97.01 (7), 97.02 (1) to (14), 97.03 (1) (a) to (n), (2) and
2 (3), 97.46, 97.47, 97.48, 97.50, 97.52 and 97.53; *to renumber and amend* 97.02
3 (intro.) and 97.03 (1) (intro.); and *to amend* 97.22 (10), 97.23 (2) (a), 100.057
4 and 100.36 of the statutes; **relating to:** adulterated, misbranded, and
5 insanitary food.

Analysis
insert

Analysis by the Legislative Reference Bureau
This is a preliminary draft. An analysis will be provided in a subsequent version
of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 6 SECTION 1. 97.01 (2) of the statutes is repealed.
- 7 SECTION 2. 97.01 (7) of the statutes is repealed.
- 8 SECTION 3. 97.02 (intro.) of the statutes is renumbered 97.02 and amended to
- 9 read:

1 **97.02 Standards; adulterated food.** ^A For the purposes of this chapter, a
2 food is adulterated: if it is adulterated within the meaning of 21 USC 342.

3 **SECTION 4.** 97.02 (1) to (14) of the statutes are repealed.

4 **SECTION 5.** 97.03 (1) (intro.) of the statutes is renumbered 97.03 and amended
5 to read:

6 **97.03 Standards; misbranding** ^A For the purposes of this chapter, a food is
7 misbranded: if it is misbranded within the meaning of 21 USC 343.

8 **SECTION 6.** 97.03 (1) (a) to (n), (2) and (3) of the statutes are repealed.

9 **SECTION 7.** 97.22 (10) of the statutes is amended to read:

10 **97.22 (10) CONFIDENTIALITY.** Any information obtained and kept by the
11 department under this section, under s. 97.24 ~~or 97.52~~, or under rules promulgated
12 under those sections, that pertains to individual milk producer production, milk fat
13 and other component tests and quality records is not subject to inspection under s.
14 19.35 except as required under s. 126.70 or except as the department determines is
15 necessary to protect the public health, safety or welfare.

16 **SECTION 8.** 97.23 (2) (a) of the statutes is amended to read:

17 **97.23 (2) (a)** If, in accordance with a rule promulgated by the department under
18 s. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8), or 97.24 (3) ~~or 97.52~~, a dairy plant operator
19 rejects a bulk milk shipment because it is adulterated with a drug residue and if the
20 dairy plant operator incurs a monetary loss as a result of the rejection of the bulk
21 milk shipment, the dairy plant operator may recover the amount of the monetary loss
22 from the milk producer who caused the bulk shipment to be adulterated with the
23 drug residue. A dairy plant operator may deduct the amounts recoverable by him
24 or her under this paragraph from the proceeds of milk sold to or through the dairy
25 plant operator by the milk producer who caused the adulteration.

Insert
2-8

1 SECTION 9. 97.46 of the statutes is repealed.

2 SECTION 10. 97.47 of the statutes is repealed.

3 SECTION 11. 97.48 of the statutes is repealed.

4 SECTION 12. 97.50 of the statutes is repealed.

5 SECTION 13. 97.52 of the statutes is repealed.

6 SECTION 14. 97.53 of the statutes is repealed.

7 SECTION 15. 100.057 of the statutes is amended to read:

8 **100.057 Wisconsin cheese logotype.** The department shall design an
9 official logotype appropriate for affixation to and display in connection with natural
10 cheese meeting quality standards established by the department and manufactured
11 in this state entirely from milk which is produced under standards which are equal
12 to or greater than standards established under s. 97.24 and rules adopted under s.
13 ~~97.24 or under minimum sanitary and quality standards prescribed under s. 97.52~~
14 ~~and rules adopted under s. 97.52.~~ The design shall consist of an outline of the
15 boundaries of the state and the words "100% Wisconsin Cheese" and such other
16 specifications as the department deems appropriate. Nothing in this section shall
17 prohibit the use of other appropriate labels or logotypes.

18 SECTION 16. 100.36 of the statutes is amended to read:

19 **100.36 Frauds; substitute for butter; advertisement.** No person may use
20 the word "butter" in any way in connection or association with the sale or exposure
21 for sale or advertisement of any substance designed to be used as a substitute for
22 butter. No person may use terms such as "cream", "creamery" or "dairy", or the name
23 or representation of any breed of dairy cattle, or any combination of such words and
24 representation, or any other words or symbols or combinations thereof commonly
25 used in the sale of butter unless at least 40% of the substitute is butterfat. If the term

1 "butter" is used in connection with the name of any such product, it shall be qualified
2 so as to distinguish it from butter as defined in s. 97.01 (1). ~~Nothing in this section~~
3 ~~prohibits a person from using the term "light butter" or "lite butter" in the manner~~
4 ~~provided in s. 97.03 (3) (b).~~

5

(END)

1 **Analysis insert**

Current law prohibits the sale of food that is adulterated or misbranded. The law contains lists of characteristics that cause a food to be considered adulterated or misbranded. This bill eliminates the lists and instead provides that a food is adulterated if it is considered to be adulterated under federal regulations and a food is misbranded if it is considered misbranded under federal regulations.

The bill also eliminates several statutes relating to substances that are prohibited in foods and to adulteration of specific foods.

2 **Insert 2-8**

x

3 **SECTION 1.** 97.18 (1) (a) of the statutes is amended to read:

4 97.18 (1) (a) For the purposes of this section “oleomargarine” or “margarine”
5 includes oleomargarine, margarine, butterine and other similar substances, fats and
6 fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily
7 to use as an alternative to butter, but this section shall not apply to lard, cream
8 cheese, cheese food compounds, nor to any other dairy product made exclusively of
9 milk or milk solids with or without added vitamins, if such product is sold or
10 distributed in such manner and form as will clearly distinguish it from butter. Nor
11 shall this section apply to shortenings not churned or emulsified in milk or cream or
12 having a melting point of 112 degrees Fahrenheit or more as determined by the
13 capillary tube method unless there is sold or given away with such shortening any
14 compound which, when mixed with such shortening, makes oleomargarine,
15 butterine or similar substances. ~~Colored oleomargarine or margarine shall be made~~
16 ~~of domestic fats or oils and shall not be made of imported oils which include, without~~
17 ~~restriction because of enumeration, whale oil, coconut oil and palm oil.~~

Barman, Mike

From: Barman, Mike
Sent: Friday, September 20, 2013 9:22 AM
To: Tradewell, Becky
Cc: Daniels, Cheryl F - DATCP
Subject: RE: Bills (already jacketed)

When I went to pull the files to jacket the drafts attached to Cheryl's email (09/20/2013) I discovered that LRB-3137 had already been jacketed for the Senate and LRB-1574 and LRB-1578 had already been jacketed for the Assembly (per RCT's instructions). Both are ready for pick-up.

From: Barman, Mike
Sent: Friday, September 20, 2013 9:08 AM
To: Tradewell, Becky
Cc: Daniels, Cheryl F - DATCP
Subject: FW: Bills

Becky & Cheryl,

We will go ahead and jacket these three drafts for the Senate ... they will be ready for pick-up later this morning.

Have companion bills (duplicate drafts with new LRB numbers) been drafted?
The companions should be tagged to be jacketed for the Assembly.

Thanks,

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Daniels, Cheryl F - DATCP [<mailto:Cheryl.Daniels@wisconsin.gov>]
Sent: Friday, September 20, 2013 8:57 AM
To: LRB.Legal
Cc: Moll, Keeley A - DATCP; Ingham, Steve C - DATCP; Meany, David V - DATCP
Subject: Bills

We believe all of these are fine for jacketing. Again, we would like them jacketed for both houses. Thank you very much.

Cheryl Furstace Daniels
Assistant Legal Counsel
Wisconsin Department of Agriculture,
Trade and Consumer Protection and
Livestock Facility Siting Review Board
2811 Agriculture Dr., Madison WI 53708-8911
608-224-5026